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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,299	12/08/2005	Robert Puskeiler	SPM-390-A	8286

7590 10/06/2009
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EXAMINER

DOE, SHANTA G

ART UNIT	PAPER NUMBER
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1797

MAIL DATE	DELIVERY MODE
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10/06/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/540,299	Applicant(s) PUSKEILER ET AL.	
	Examiner SHANTA G. DOE	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-54 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-20, 31-34, 47, & 48 drawn to device for cultivating cells in a column on a milliliter scale.

Group II, claim(s) 21-30, and 35-46, drawn to an agitation system.

Group III, claim(s) 49-54, drawn to method of cultivating cells in liquid columns on a milliliter scale.

2. The inventions listed as Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The corresponding special technical feature of group I-III is an agitation system that is configured in such a manner that the flow velocity is modified at least one of locally and temporally along the stream line or flow line about the agitation.

Kocienski (US 7,547,135) discloses a container capable of receiving a liquid culture suspension, and an agitation system for mixing wherein at least one of the container and the agitation system are configured in such a manner that the flow velocity is modified at least locally and temporally along a streamline or flow line about the agitation axis (specifically, the baffles (24) on the inner container walls with/without mixer attached to shaft (32) extending through the container is capable of modifying the flow velocity at least locally and temporally along a streamline or flow line about the agitation axis)

The Kocienski reference (US 7,547,135) discloses all the limitations of the special technical feature of group I-III. The corresponding special technical feature is not defined (i.e. new-special) over the prior art and there is not a single general inventive concept that links the three groups together. Therefore, there is a lack of unity of invention in the group of inventions claimed by the applicant.

3. Group I of this application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1. The species are as follows:

- Specie A – drawn to a container wherein that the inner wall of the container has

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below, at least one of in and above the rotational plane of the agitation system a non-rotationally symmetrical form (the container is configured to modify the flow velocity at least locally or temporally by having a non-rotationally symmetrical form, see claim 4)

- Specie B - drawn to a container wherein that the inner wall of the container has below, at least one of in and above the rotational plane of the agitation system a polygon preferably with four, five or six or more corners (the container is configured to modify the flow velocity at least locally or temporally by having a polygon shape below or above the rotational plane of the agitation, see claim 5).
- Specie C - drawn to an agitation system wherein the rotational axis of the agitation system is disposed off-centre or eccentrically in the container with respect to the inner wall of the container (the agitation system is configured to modify the flow velocity at least locally or temporally by having rotational axis of the agitation system disposed off-centre, see claim 6).
- Specie D- drawn to an agitation system wherein at least one baffle is disposed on the inner wall of the container along the circumference of the agitation system (see claim 7).
- Specie E, drawn to a device where in the container is a flask , a reagent glass or a cavity in a microtitre plate or another plate with cavities (see claim 11).

- Specie F, drawn to a device where the agitation system is at least one of magnetically positioned and drivable (see claim 12, 34)

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

4. The claims are deemed to correspond to the species listed above in the following manner:

Specie A: claims 1, 4, & 13

Specie B, claims 1, 5, & 13

Specie C, claims 1, 6, & 13

Specie D, 1 & 7-20

Specie E, 1, 11 & 13

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Specie F, 1,12,31 –34,47,48, &13

The following claim(s) are generic: Claims 1 and 13.

5. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons:

The corresponding special technical feature of the 6 species is an agitation system that is configured in such a manner that the flow velocity is modified at least one of locally and temporally along the stream line or flow line about the agitation.

Kocienski (US 7,547,135) discloses a container capable of receiving a liquid culture suspension, and an agitation system for mixing wherein at least one of the container and the agitation system are configured in such a manner that the flow velocity is modified at least locally and temporally along a streamline or flow line about the agitation axis (specifically , the baffles (24) on the inner container walls with/without mixer attached to shaft (32) extending through the container is capable of modifying the flow velocity at least locally and temporally along a streamline or flow line about the agitation axis)

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The Kocienski reference (US 7,547,135) discloses all the limitations of the special technical features of species A-G. The corresponding special technical feature is not defined (i.e. new-special) over the prior art and there is not a single general inventive concept that links the three groups together. Therefore, there is a lack of unity of invention in the group of inventions claimed by the applicant.

6. A telephone call was made to Darlene Condra on April 1, 2009 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions

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unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103 (a) of the other invention

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shanta G. Doe whose telephone number is 571-270-3152. The examiner can normally be reached on Mon-Fri 8am-5pm(alternate Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on 571-272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GSD

/Walter D. Griffin/
Supervisory Patent Examiner, Art Unit 1797